



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Doc. No. AMS-LS-12-0022]

Soybean Promotion and Research: Amend the Order to Adjust Representation on the United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts the number of members on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the Board was reapportioned in 2009. As required by the Soybean Promotion, Research, and Consumer Information Act (Act), membership is reviewed every 3 years and adjustments are made accordingly. This change results in an increase in Board membership for Mississippi, increasing the total number of Board members from 69 to 70. The change will be effective for the 2013 nomination and appointment process.

EFFECTIVE DATE: January 3, 2012.

FOR FURTHER INFORMATION CONTACT: Emily DeBord, Agricultural Marketing Specialist, Marketing Programs Division, Livestock, Poultry and Seed Program, AMS, USDA, Room 2628-S, STOP 0249, 1400 Independence Avenue, SW., Washington, D.C. 20250-0249; Telephone 202/690-2611; Fax 202/720-1125; or e-mail to Emily.DeBord@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The Soybean Promotion, Research, and Consumer Information Act (Act) provides that nothing in this subtitle may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under §1971 of the Act, a person subject to the Soybean Promotion, Research, and Consumer Information Order (Order) may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

The Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), because it only adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was reapportioned in 2009. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

As such, these changes will not impact on persons subject to the program.

There are an estimated 589,182 soybean producers and an estimated 10,000 first purchasers who collect assessments, most of whom would be considered small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural producers as those having annual receipts of less than \$750,000, and small agricultural firms as those having annual receipts of less than \$7,000,000.

Paperwork Reduction Act

In accordance with OMB regulations [5 CFR part 1320] that implement the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements contained in the Order and Rules and Regulations have previously been approved by OMB under OMB control number 0581-0093.

Background

The Act (7 U.S.C. 6301-6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was originally divided into 30 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991. The Board is composed of soybean producers.

Section 1220.201(c) of the Order provides that at the end of each three (3) year period,

the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit.

Section 1220.201(d) of the Order provides that at the end of each three (3) year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in §1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one Board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four Board members.

The Board was last reapportioned in 2009. The total Board membership increased from 68 to 69 members, with Ohio gaining one additional member. This change was effective with the 2010 appointments.

Currently, the Board has 69 members representing 30 geographical units. This membership is based on average production levels for the years 2004-2008 (excluding crops in years that production was the highest and that production was the lowest) as reported by the U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service (NASS).

Comments

A proposed rule was published in the Federal Register (74 FR 27467) on July 10, 2012, with a 60-day comment period. USDA received one comment. The comment mainly addressed food production in the United States, which is not relevant to the rulemaking. The comment also asked that the Board be reduced from 70 members to five (5) members. Such a reduction in the number of members on the Board would not be consistent with the Act and Order. Accordingly, no change is made as a result of this comment.

The increase in representation on the Board, from 69 to 70 members, is based on average production levels for the years 2007-2011 (excluding the crops in years in which production was the highest and in which production was the lowest) as reported by NASS. The change does not affect the number of geographical units.

This final rule increases Board membership from 69 members to 70 members effective with 2013 nominations and appointments.

This final rule adjusts representation on the Board as follows:

State	Previous Representation	Current Representation
Mississippi	2	3

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure; Advertising; Agricultural research; Marketing agreements; Soybeans and soybean products; and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, part 1220 is amended as follows:

**PART 1220-SOYBEAN PROMOTION, RESEARCH, AND CONSUMER
INFORMATION**

1. The authority citation for 7 CFR Part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301-6311 and 7 U.S.C. 7401.

2. In §1220.201, paragraph (a), the table is revised to read as follows:

§1220.201 Membership of board.

(a)***

Unit	Number of Members
Illinois	4
Iowa	4
Minnesota	4
Indiana	4
Nebraska	4
Ohio	4
Missouri	3
Arkansas	3
South Dakota	3
Kansas	3
Michigan	3
North Dakota	3
Mississippi	3
Louisiana	2
Tennessee	2
North Carolina	2
Kentucky	2
Pennsylvania	2
Virginia	2
Maryland	2
Wisconsin	2
Georgia	1
South Carolina	1

Alabama	1
Delaware	1
Texas	1
Oklahoma	1
New York	1

Unit	Number of Members
Eastern Region (Massachusetts, New Jersey Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico).....	1
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska)....	1

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Dated: December 26, 2012

David R. Shipman
Administrator

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